

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOHN HERNANDEZ,

Petitioner,

vs.

GREG COX, et al.,

Respondents.

Case No. 3:11-CV-00563-RCJ-(VPC)

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#4) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court finds that petitioner is unable to pay the filing fee.

The court has reviewed the petition pursuant to 28 U.S.C. § 2243, and the court finds that the action must be dismissed. Petitioner does not challenge the validity of his confinement in prison. Instead, he alleges that respondents are deliberately indifferent to his serious medical needs, that respondents are interfering with his mail, that respondents are interfering with his access to the courts, and that respondents are engaged in a conspiracy. “Habeas corpus proceedings are the proper mechanism for a prisoner to challenge the ‘legality or duration’ of confinement. A civil rights action, in contrast, is the proper method of challenging ‘conditions of . . . confinement.’” Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (quoting Preiser v. Rodriguez, 411 U.S. 475, 484, 498-99 (1973)). Petitioner needs to raise these claims in a civil action pursuant to 42 U.S.C. § 1983 and the other statutory provisions that he cites.

1 Reasonable jurists would not disagree with this conclusion, and the court will not issue a
2 certificate of appealability.

3 Petitioner has submitted motions for directed verdict (#5, #6). This motion is moot because
4 the court is dismissing the action.

5 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#4) is
6 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

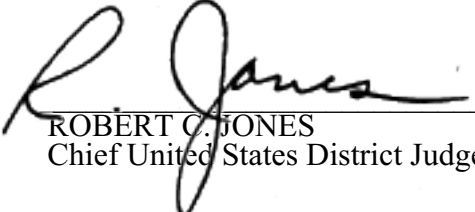
7 IT IS FURTHER ORDERED that petitioner's motions for directed verdict (#5, #6) are
8 **DENIED** as moot.

9 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of
10 habeas corpus pursuant to 28 U.S.C. § 2254.

11 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice. The clerk
12 of the court shall enter judgment accordingly.

13 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

14 Dated: October 27, 2011.

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17 ROBERT C. JONES
18 Chief United States District Judge
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